

ADDITIONAL REGULATORY STATEMENTS

FAMILY CARE SAFETY REGISTRY

IF AGENCY FAILED TO REQUEST AND/OR OBTAIN RESULTS OF FCSR; IF PERSON REFUSED TO REGISTER OR AGENCY EMPLOYS PERSON WITH A HIT WHO HAS NOT APPLIED FOR A GOOD CAUSE WAIVER:

Review of Section 660.317.7, RSMo states: "Any in-home services provider agency or home health agency shall be guilty of a class A misdemeanor if such agency knowingly employs a person to provide in-home services or home health services to any in-home services client or home health patient and such person either refused to register with the family care safety registry or is listed on any of the background check lists in the family care safety registry pursuant to sections 210.900 to 210.937, RSMo."

IF HOME HEALTH AGENCY OR HOSPICE FAILED TO OBTAIN A CRIMINAL DISCLOSURE STATEMENT OR A CONSENT TO OBTAIN CRIMINAL RECORD INFORMATION:

Review of Section 660.317.5, RSMo states: "An applicant for a position to have contact with patients or residents of a provider shall: (1) Sign a consent form as required by Section 43.540, RSMo, so the provider may request a criminal records review; (2) Disclose the applicant's criminal history. For the purposes of this subdivision "criminal history" includes any conviction or a plea of guilty to a misdemeanor or felony charge and shall include any suspended imposition of sentence, any suspended execution of sentence or any period of probation or parole; and (3) Disclose if the applicant is listed on the employee disqualification list as provided in section 660.315."

IF THE HOME HEALTH AGENCY OR HOSPICE FAILED TO CHECK THE EMPLOYEE DISQUALIFICATION LIST PRIOR TO THE EMPLOYEE HAVING PATIENT CONTACT:

Review of Section 660.317.3 (2), RSMo states: "Prior to allowing any person who has been hired as a full-time, part-time or temporary position to have contact with any patient or resident the provider shall, or in the case of temporary employees hired through or contracted for an employment agency, the employment agency shall prior to sending a temporary employee to a provider: ...make an inquiry to the department of health and senior services whether the person is listed on the employee disqualification list as provided in section 660.315."

IF THE AGENCY HIRES A PERSON WITH A FCSR HIT AND A GOOD CAUSE WAIVER APPLICATION IS NOT MADE BY THE EMPLOYEE:

Review of Section 660.317.10, RSMo states: "Except for the hiring restriction based on the department of health and senior services employee disqualification list established pursuant to section 660.315, the department of health and senior services shall promulgate rules and regulations to waive the hiring restrictions pursuant to this section for good cause. For purposes of this section "good cause" means the department has made a determination by examining the employee's prior work history and other relevant factors that such employee does not present a risk to the health and safety of residents."

IF THE HOSPICE FAILS TO DO A CRIMINAL BACKGROUND CHECK:

Review of Section 660.317.3, RSMo states: "Prior to allowing any person who has been hired as a full-time, part-time or temporary position to have contact with any patient or resident the provider shall, or in the case of temporary employees hired through or contracted for an employment agency, the employment agency shall prior to sending a temporary employee to a provider: (1) Request a criminal background check as provided in section 43.540, RSMo."

HEPATITIS B VACCINATION

IF THE AGENCY FAILED TO DETERMINE WHETHER OR NOT AN EMPLOYEE WANTED THE HEP B VACCINE OR IF THE AGENCY FAILED TO PROVIDE THE VACCINATIONS:

Review of 29 CFR 1910.1030 (f)(1)(i)(ii),(ii)(A),(2)(iv) Occupational Safety and Health Administration (OSHA) states: "The employer shall make available the hepatitis B vaccine and vaccination series to all employees who have occupational exposure, and post-exposure evaluation and follow-up to all employees who have had an exposure incident. The employer shall ensure that all medical evaluations and procedures including the hepatitis B vaccine and vaccination series and post-exposure evaluation follow-up, including prophylaxis, are: Made available at no cost to the employee...The employer shall assure that employees who decline to accept the hepatitis B vaccination offered by the employer sign the statement in Appendix A."

ALZHEIMER'S/DEMENTIA SPECIFIC TRAINING

IF THE AGENCY FAILED TO PROVIDE ALZHEIMER'S/DEMENTIA TRAINING AS PART OF ORIENTATION OR ON AN ONGOING BASIS:

Review of Section 660.050.8, RSMo states: "The department of health and senior services shall, by January 1, 2002, establish minimum dementia-specific training requirements for employees involved in the delivery of care to persons with Alzheimer's disease or related dementias who are employed by home health and hospice agencies licensed by chapter 197, RSMo. Such training shall be incorporated into the home health and hospice agency's new employee orientation and ongoing in-service curricula for all employees involved in the care of persons with dementia. The dementia training need not require additional hours of orientation or ongoing in-service. Training shall include at a minimum, the following:

- (1) For employees providing direct care to persons with Alzheimer's disease or related dementias, the training shall include an overview of Alzheimer's disease and related dementias, communicating with persons with dementia, behavior management, promoting independence in activities of daily living, and understanding and dealing with family issues;
- (2) For other employees who do not provide direct care for, but may have daily contact with, persons with Alzheimer's disease or related dementias, the training shall include an overview of dementias and communicating with persons with dementias."

NURSE PRACTICE ACT

IF THE STANDARD OF PRACTICE FOR PROFESSIONAL NURSING IS NOT MET:

The Nursing Practice Act, Chapter 335, RSMo defines "Professional Nursing" at 335.016(10) as "the performance for compensation of any act which requires substantial specialized education, judgment and skill based on knowledge and application of principles derived from the biological, physical, social and nursing sciences, including, but not limited to:

- (a) Responsibility for the teaching of health care and the prevention of illness to the patient and his or her family;
- (b) Assessment, nursing diagnosis, nursing care, and counsel of persons who are ill, injured or experiencing alterations in normal health processes;
- (c) The administration of medications and treatments as prescribed by a person licensed by a state regulatory board to prescribe medication and treatments;
- (d) The coordination and assistance in the delivery of a plan of health care with all members of a health team;
- (e) The teaching and supervision of other persons in the performance of any of the foregoing."

ADVANCE DIRECTIVES

IF THE AGENCY FAILED TO INCLUDE A COPY OF THE PATIENT'S POWER OF ATTORNEY FOR HEALTH CARE DECISIONS IN THE CLINICAL RECORD:

Per 404.840.1, RSMo: "A copy of a power of attorney for health care decisions shall be made a part of the patient's medical record when the existence of the power of attorney becomes known to the patient's health care provider and prior to the provider's taking any action pursuant to the decision of the attorney in fact."

IF THE AGENCY FAILED TO DETERMINE WHETHER OR NOT A PATIENT HAD AN ADVANCE DIRECTIVE:

Per 42 CFR 489.102(a)(2) home health agencies and hospices are required to... "Document in the individual's medical record whether or not the individual has executed an advance directive."

IF THE AGENCY FAILED TO GIVE THE PATIENT ANY INFORMATION REGARDING ADVANCE DIRECTIVES:

Per 42 CFR 489.102(a)(1)(i) the agency failed to "Provide written information to such individuals concerning – (i) An individuals rights under State law (whether statutory or recognized by courts of the State) to make decisions concerning such medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate, at the individual's option, advance directives." The agency failed to provide the patient with information regarding applicable State law regarding advance directives found at Chapter 459, RSMo (Declarations, Life Support), Sections 404.800 through 404.865, RSMo (Durable Power of Attorney for Health Care Act) and *Cruzan v. Director, Mo. Dept. of Health*, 497 U.S. 261, 110 S.Ct. 2841, 111 L.Ed.2d 224 (1990).

IF THE AGENCY FAILED TO INCLUDE MISSOURI CASE LAW IN THE ADVANCE DIRECTIVE INFORMATION GIVEN TO THE PATIENT:

Per 42 CFR 489.102(a)(1)(i) the agency failed to "Provide written information to such individuals concerning – (i) An individuals rights under State law (whether statutory or recognized by courts of the State) to make decisions concerning such medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate, at the individual's option, advance directives." The agency failed to provide the patient with information regarding applicable Missouri case law as set forth in *Cruzan v. Director, Mo. Dept. of Health*, 497 U.S. 261, 110 S.Ct. 2841, 111 L.Ed.2d 224 (1990). This case identified that advance directives that do not meet the formal requirements of either a living will or durable power of attorney for health care can be established by "clear and convincing evidence" of the patient's wishes as to the withdrawal of life-sustaining treatment.